

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

TERRY L. SEQUERIA
Plaintiff,

v.

FORD MOTOR CO.,
Defendant.

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Civ. No. 3:04CV883 (CFD)

ORDER OF DISMISSAL

_____The plaintiff, Terry Sequeira, brought a product liability action against Ford Motor Company ("Ford") in the Connecticut Superior Court, claiming that she was injured when her 1995 Ford Windstar experienced brake failure. On May 27, 2004, Ford removed Sequeira's action to this Court. On December 27, 2004, Ford filed a motion to dismiss Sequeira's action for failure to prosecute. Consequently, on April 28, 2005, the Court gave Sequeira explicit notice that, pursuant to D.Conn. L. Civ. R. 41(a) and Fed. R. Civ. P. 41(b), her "failure to submit a memorandum in opposition to [the] motion may be deemed sufficient cause to grant the motion," and that if no opposition is filed within twenty days of that notice, Ford's motion may be granted. No reply has been received from Sequeira since the date of that notice.

I Discussion

Rule 41(b) provides, in relevant part: "For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant." To determine whether a case should be dismissed under Rule 41(b), a court should consider: (1) the duration of the plaintiff's failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply would result in dismissal,

(3) whether the defendants are likely to be prejudiced by further delay in the proceedings, (4) a balancing of the court's interest in managing its docket with the plaintiff's interest in receiving a fair chance to be heard, and (5) whether the judge has adequately considered a sanction less drastic than dismissal. Lucas v. Miles, 84 F.3d 532, 535 (2d Cir. 1996); Alvarez v. Simmons Mkt. Research Bureau, Inc., 839 F.2d 930, 932 (2d Cir. 1988). Consideration of these factors under the facts of this case compels the conclusion that Sequeira's action should be dismissed pursuant to Rule 41.

First, Ford filed its motion to dismiss on December 27, 2004, and, pursuant to D.Conn. L. Civ. R. 7(a), Sequeira had until January 17, 2005 to file a memorandum in opposition.¹ Acting *sua sponte*, the Court issued an additional notice of the pending motion to dismiss to Sequeira, and extended the time in which she could file a response until May 17, 2005. Despite the passage of six months, Sequeira has never filed a response to Ford's motion to dismiss or a request for additional time.

Second, as noted previously, this Court provided Sequeira with clear and detailed notice that failure to respond to Ford's motion could lead to dismissal.

Third, there likely would be some prejudice to Ford if the Court were to allow Sequeira to maintain this action without properly complying with orders of this Court and the rules of civil procedure applicable to actions pending in this District.

Fourth, the Court has attempted to provide the plaintiff with "a fair chance to be heard"

¹D.Conn. L. Civ. R. 7(a) provides, in relevant part: "Unless otherwise ordered by the Court, all memoranda in opposition to any motion shall be filed within twenty-one (21) days of the filing of the motion . . . Failure to submit a memorandum in opposition to a motion may be deemed sufficient cause to grant the motion, except where the pleadings provide sufficient grounds to deny the motion."

on Ford's motion—an attempt that has been declined up to this time.

And, fifth, after considering less drastic sanctions than dismissal, the Court concludes that dismissal is the most appropriate course of action. In so concluding, the Court is mindful that this case was removed in May 2004, and counsel appeared for Sequeira in October 2004. Since that time, however, there has been no action or correspondence from Sequeira.

II Conclusion

Rule 41(b) provides that, "[u]nless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision . . . operates as an adjudication upon the merits." Ford argues that Sequeira's action should be dismissed with prejudice due to her "failure to make a good faith effort to bring this case to a resolution." The Court agrees, and dismisses Sequeira's action with prejudice. In making this determination, the Court notes that, in addition to not responding to Ford's motion to dismiss for lack of prosecution despite a specific request from this Court to do so, Sequeira also has not responded to repeated attempts by Ford's counsel to schedule the planning conference and complete the joint Form 26(f) report—both of which are required by D.Conn. L. Civ. R. 41(a).

Consequently, the motion to dismiss **[Doc. # 8]** is **GRANTED** with prejudice. The clerk is directed to close this case.

SO ORDERED this 23rd day of June 2005, at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE